

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SCOTT SCHER,

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Plaintiff,

v.

CIVIL ACTION NO. 4:21-cv-48

DEUTSCHE BANK TRUST COMPANY
AMERICAS, ET AL.,

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Defendants.

NOTICE OF PLAINTIFF'S FAILURE TO RESPOND TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates Series 2006-QS14 and PHH Mortgage Corporation (together, “Defendants”), file this *Notice of Plaintiff's Failure to Respond to Defendants' Motion for Summary Judgment*, and respectfully show the Court as follows:

1. Defendants filed their *Motion for Summary Judgment and Brief in Support Thereof* on Friday, October 1, 2021. (Doc. 14). Defendants then filed their *Unopposed Motion for Leave to File First Amended Motion for Summary Judgment and Brief in Support Thereof* (Doc. 15) on Monday, October 4, 2021. The amendment was sought in order to fix some of the citations to the summary judgment evidence. No other changes were to be made to the original submission. Counsel for Defendants conferred with counsel for Plaintiff Scott Scher (“Plaintiff”), and they were unopposed to the motion for leave to file the amended dispositive motion. That motion for leave was filed incorrectly, with the amended dispositive motion improperly attached as an exhibit. This mistake was corrected the following day on October 5,

2021. (See Docs. 16 and 17.) Leave was then granted by this Court on October 7, 2021 (see Doc. 18), and the Court deemed *Defendants' First Amended Motion for Summary Judgment and Brief in Support Thereof* (Doc. 17) (the “Amended Summary Judgment Motion”) filed as of October 7, 2021. (See Doc. 18.)

2. Plaintiff was served with each of the above-noted filings via the Court’s electronic service. (See Docs. 14-18.) Pursuant to the local rules of this Court, Plaintiff’s deadline to respond to the Amended Summary Judgment Motion was 21 days from the date it was deemed filed (October 7th). (See Local CV-7(e).) Thus, this deadline fell on October 28, 2021. Despite service, and despite passage of the 21 day period—indeed now 40 days have passed—Plaintiff has failed to respond.

3. Pursuant to local rule CV-7(d), a party’s failure to timely oppose a motion “creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.” Plaintiff’s lack of response here permits the Court to presume Plaintiff has no controverting evidence to raise a fact issue in support of his claims. Defendants respectfully submit that the Court should, therefore, summarily dismiss all of Plaintiff’s claims with prejudice for all the reasons Defendants discuss in their Amended Summary Judgment Motion.

Respectfully submitted,

/s/ Elizabeth K. Duffy

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 16th day of November 2021 via e-filing on:

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/s/ Elizabeth K. Duffy

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